Supreme Court of the United States

REPLY OF THE PETITIONERS TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

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IN THE

Supreme Court of the United States

October Term, 1960

No. 920

MAX MILLET and DORA MILLET,

Petitioners,

—v.—

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY OF THE PETITIONERS TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

Statement

Petitioners' Certiorari Petition sets forth the Opinion Below (p. 1), Jurisdiction (p. 2), Questions Presented (pp. 2-3), The Statutes (pp. 3-5), Statement of the Case (pp. 5-6), Arguments (pp. 6-16).

As to the merits of the question presented in the Opposition Brief, they advocate the novel doctrine that acts of the Postmaster General unauthorized by any statute cannot be questioned or reviewed by this Court.

They are answered fully in the Petitioners' Certiorari Petition (pp. 6-16).

The Opposition Brief (pp. 8-9) raises the issue of jurisdiction without merit.

Petitioners' Certiorari Petition (p. 2) states that the jurisdictional basis of the District Court is founded on the Tucker Act, 28 U. S. C., Section 1346(a)(2) (1958 Ed.), Quiet Title Statute, 28 U. S. C., Section 2410 (1958 Ed.), Postal Service Statute, 28 U. S. C., Section 1339 (1958 Ed.) and Due Process provision, 5th Amendment, United States Constitution.

Petitioners' complaint (R. 2a-4a) states in the jurisdictional allegation that jurisdiction of the District Court is founded on Quiet Title Statute, 28 U. S. C., Section 2410 (1958 Ed.) and Tucker Act, 28 U. S. C., Section 1346(a)(2) (1958 Ed.) citing Public Contracts Act 1906, 41 U. S. C., Section 11 (1958 Ed.) (R. 3a) and Due Process, 5th Amendment, United States Constitution (R. 4a) as the federal statute and constitutional claim.

ARGUMENT

POINT I

The Court has jurisdiction of this suit under the Tucker Act, 28 U. S. C., Section 1346(a)(2).

Under the Tucker Act, the District Court has original jurisdiction of any civil suit where the amount claimed does not exceed $10,000.00 and is based on the Constitution or any act of Congress. The complaint alleges as jurisdiction the Constitution and the federal statute. It cites the due process provision of the Fifth Amendment and the Quiet Title Act, 28 U. S. C., Section 2410 [1958 Ed.].

No amount is claimed in the prayer for relief. This does not exceed the jurisdictional amount and may be amended, if needed, under Title 28 U. S. C., Section 1653 (1958 Ed.) even in this Court.

Further, under Rule 8a F. R. C. P. and Rule 54c F. R. C. P., the proper relief may be granted even if not asked

for in the prayer for relief. The existence of a void and invalid lease instrument filed on the title to the subject property as alleged in the complaint entitles Petitioners to nominal as well as real damages.

The lease instrument filed on the real property violates the Petitioners' property rights under the Fifth Amendment Due Process provision, U. S. Constitution, Amendment 5. It forbids deprivation of property rights without due process of law. In this case, there is no law which authorized the lease instrument. This void instrument filed against the Petitioners' property is a cloud on Petitioners' title, *Humble Oil & Refining Co.* v. *Sun Oil Co.*, U. S. C. A. 5th Cir. 1951, 191 F(2d) 705, 718 and deprives them of their property rights without due process of law as it sits on Petitioners' title without legitimate existence.

While there is no decided case of record in which it has been held that a filed void lease violates due process under the 5th Amendment, such fact of itself makes the violation evident.

The illegal act, even of the Government agent, can be removed by legal means.

While there is no decided case on all fours, in *U. S.* v. *Certain Lands at Great Neck etc.*, D. C. E. D. N. Y. 1943, 49 F. Supp. 265, the Court held there was a violation of the 5th Amendment where the property owners' contract right to an easement to use a common road was extinguished. The violation of the 5th Amendment is even more evident where the property owners' title to his own land is beclouded and encumbered with a void and invalid lease—void and invalid because it came into existence without authority of law.

Bell v. *Hood*, 1946, 327 U. S. 678, 682 indicates that the District Court has jurisdiction under the Tucker Act, 28

U. S. C., Section 1346(a)(2) where the claim is based on the Constitution under the 4th and 5th Amendments. *Fielding* v. *Allen*, U. S. C. A. 2nd Cir. 1950, 181 F(2d) 163, 166, citing *Bell* v. *Hood, supra*, stated that a substantial claim under a federal statute presents a case within the jurisdiction of the federal courts [applicable under Tucker Act, 28 U. S. C., Section 1346(a)(2)] and that the statute on which claim is based need not expressly provide for remedy by way of suit. Quiet Title Statute, 28 U. S. C., Section 2410 gives consent to such suit against the United States and falls within the rule enunciated in *Fielding* v. *Allen*.

In either event, the case at bar relies on the 5th Amendment or Quiet Title Statute for jurisdiction and falls squarely within the rule of *Bell* v. *Hood* and *Fielding* v. *Allen*.

POINT II

The Court has jurisdiction of this suit under other laws.

The District Court has original jurisdiction of any civil suit under any law of Congress relating to the Postal Service, 28 U. S. C., Section 1339 (1958 Ed.). The two statutes cited at page 4 of Petitioners' Certiorari Petition, 1950 Post Office Department Financial Control Act and 1954 Post Office Department Property Act are part of Title 39 U. S. C., Postal Service Law and they are the basis of the claim on which the lease instrument and the lease-construction agreement are invalid.

Under the above statute, the amount of claim is not material to jurisdiction. *Fite* v. *Payne*, D. C. N. D. Texas 1950, 91 F. Supp. 21 and *Griffith* v. *Vick Grocery Co.*, C. C. A. 6th Cir. 1921, 272 F. 246.

Quiet Title Statute 28 U. S. C., Section 2410 in the case at bar involves a Post Office Department lease and in this respect "relates" to the Postal Service within 28 U. S. C., Section 1339.

POINT III

The complaint is not dismissable for any alleged jurisdictional defective averment or prayer.

Aside from the Rules and Statute cited in Point I, *supra*, the decisions do not favor dismissal on this score but favor correction by the Court, if needed, and a ruling on the merits. *Nagler* v. *Admiral Corp.*, U. S. C. A. 2nd Cir. 1957, 248 F(2d) 319; *Dioguardi* v. *Durning*, U. S. C. A. 2nd Cir. 1944, 139 F(2d) 774; *Keiser* v. *Walsh*, U. S. C. A., D. C. 1941, 118 F(2d) 13; *Rank* v. *Krug*, U. S. D. C., N. D. Cal. 1950, 90 F. Supp. 773.

POINT IV

The petitioners are entitled to equitable relief of the Court.

Quiet Title Statute is at least a consent to suit by the United States. Consent to suit is a consent to relief under the statute. As the object of quiet title suit is equitable relief of the Court to remove cloud on title and the Court has general jurisdiction at law and equity to remove the cloud cast by a void and invalid lease, *Humble Oil & Refining Co.* v. *Sun Oil Co.*, U. S. C. A. 5th Cir. 1951, 191 F(2d) 705, page 718, the point made in Opposition Brief, *supra*, is without any merit since the consent to suit under Quiet Title Statute, *supra*, puts the Government in the status of any other litigant before the Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

May 1961.

Respectfully submitted,

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